

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

<b>STEVEN WIMMER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 07-4238-CV-C-RED-SSA</b>
	)	
<b>MICHAEL J. ASTRUE</b>	)	
<b>Commissioner of Social Security,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

Plaintiff Steven Wimmer (“Wimmer”) seeks judicial review of the Commissioner’s denial of his request for Disability Insurance Benefits under Title II of the Social Security Act, 42 U.S.C. § 401 *et seq.* Plaintiff has exhausted all of his administrative remedies, and judicial review is now appropriate. After carefully reviewing the record, the Court hereby **AFFIRMS** the decision of the Administrative Law Judge (“ALJ”).<sup>1</sup>

**I. Background**

The complete facts and arguments are presented in the parties’ briefs and will be duplicated here only to the extent necessary. Additionally, the ALJ’s decision within the administrative record fully sets forth his findings and as such will not be repeated herein in its entirety except to the extent necessary to address Plaintiff’s arguments.

**II. Standard of Review**

The Court’s review is limited to determining whether the Commissioner applied the correct

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<sup>1</sup> Because the Court finds that substantial evidence supports the ALJ’s decision and that the ALJ applied the correct standard of law, the Court adopts much of Defendant’s brief without quotation or citation.

standard of law and whether the Commissioner's findings of fact are supported by substantial evidence on the record as a whole. *See* 42 U.S.C. §§ 405(g), 1383(c)(3) (2000); *Warburton v. Apfel*, 188 F.3d 1047, 1050 (8th Cir. 1999). Substantial evidence is relevant evidence that a reasonable mind would accept as sufficient to support the Commissioner's conclusion. *See Warburton*, 188 F.3d at 1050. In making this determination, the Court considers evidence that detracts from the Commissioner's decision as well as evidence that supports it. *See id.* The Court may not reverse the Commissioner's decision merely because substantial evidence supports a different result. *See Pierce v. Apfel*, 173 F.3d 704, 706 (8th Cir. 1999). This is true even if the Court might have weighed the evidence differently and reached a different result if a de novo review were applied. *Pearsall v. Massanari*, 274 F.3d 1211, 1219 (8th Cir. 2001).

To receive disability benefits a claimant must show: (1) a medically determinable physical or mental impairment that has lasted, or can be expected to last, for not less than twelve months; (2) an inability to engage in any substantial gainful activity; and (3) the inability results from the impairment. *See* 42 U.S.C. §§ 423 (d)(1)(A), (d)(2); *see also Timmerman v. Weinberger*, 510 F.2d 439, 442 (8th Cir. 1975). The Court reviews the ALJ's decision to determine whether the ALJ followed the Commissioner's implementing regulations which set out a five-step, burden-shifting process for determining whether the claimant has a "disability" within the meaning of the Social Security Act.

The five steps are: (1) whether the claimant is currently engaging in "substantial gainful activity," (2) whether the claimant is severely impaired, (3) whether the severe impairment is, or is comparable to, a listed impairment precluding substantial gainful activity as a matter of law, (4) whether the claimant, with his current Residual Functional Capacity ("RFC") can meet the demands

of his past work, and if not; (5) whether the claimant retains the capacity to perform any other work that exists in significant numbers in the economy. *See* 20 C.F.R. §§ 404.1520, 416.920 (2007); *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987) (discussing the five-step analysis). In the first four steps, the burden is on the claimant to prove that he is disabled. If the claimant is not able to perform his past work, the burden shifts to the Commissioner to prove that there are jobs in the national economy that the claimant can perform, although the ultimate burden of persuasion remains with the claimant. *See Harris v. Barnhart*, 356 F.3d 926, 931 n.2 (8th Cir. 2004); *see also Barnhart v. Thomas*, 540 U.S. 20, 24, 28 (2003) (noting that the existence of jobs in the national economy must be proved only at step five). If at any step in the evaluation process the claimant is determined to be not disabled, the inquiry ends. 20 C.F.R. § 404.1520(a)(4) (2007); *see Pelkey v. Barnhart*, 433 F.3d 575, 577 (8th Cir. 2006).

### **III. Analysis**

Wimmer raises a single argument in challenging the ALJ's finding of no disability. Wimmer contends the ALJ erred in assigning no weight to the medical source statement of nurse practitioner Sara Revelle.

In explaining how evidence from "other sources," including nurse practitioners, may be used, Social Security Ruling 06-03p states: "Information from these 'other sources' cannot establish the existence of a medically determinable impairment. Instead, there must be evidence from an 'acceptable medical source' for this purpose." 71 Fed. Reg. 45,593, 45,594 (August 9, 2006). Certain factors will be applied when considering the opinions from medical sources who are not "acceptable medical sources" including, but not limited to, how consistent the opinion is with other evidence and the degree to which the source presents relevant evidence to support the opinion. *Id.*

at 45,595.

Here, the ALJ gave no weight to the medical source statement provided by Ms. Revelle. The ALJ noted that while her opinion may be relied upon under Social Security Ruling 06-03p, he concluded her report “merely recites the complaints of the claimant.” (Tr. at 20). The ALJ also noted that Wimmer’s complaints to Ms. Revelle varied significantly from the medical evidence from the University of Missouri Hospital (Tr. at 18). The ALJ properly discounted the opinion of Ms. Revelle in favor of the opinion of Wimmer’s treating physician, Dr. Kazmier, in accordance with Social Security Ruling 06-03p. *See* 71 Fed. Reg. at 45,494. The Court finds the ALJ did not err in giving no weight to the opinion of a nurse practitioner especially in light of the contradictory evidence from Wimmer’s treating physician, an acceptable medical source.

#### **IV. Conclusion**

Upon review of the record, the Court finds that substantial evidence on the record as a whole supports the ALJ’s findings in this case. Accordingly, it is hereby ORDERED that the decision of the ALJ in partial denying disability benefits is **AFFIRMED**.

**IT IS SO ORDERED.**

DATE: August 6, 2008

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE  
UNITED STATES DISTRICT COURT